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Howell, E. F., Jr.

The functions of a claim department

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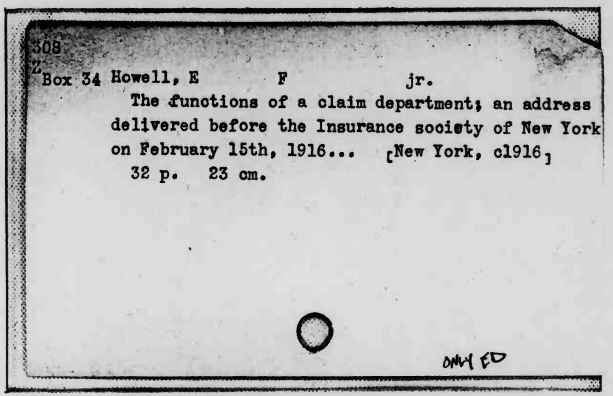

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THE FUNCTIONS OF A CLAIM DEPARTMENT

AN ADDRESS

DELIVERED BEFORE

The Insurance Society of New York

ON

February 15th, 1916

BY

Mr. E. F. Howell, Jr.
Superintendent Liability Claims Department
Royal Indemnity Company

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The Functions of a Claim Department.

We are all engaged in the same general line of work—namely insurance. If we listen to what other people think of us we learn that the Socialists refer to us as parasites while some eminent economists say that insurance companies are aids to production. Naturally we prefer the latter cognomen as being more euphonious, in better taste and as giving us the more respectable standing in the community and business affairs generally.

A natural question is—What is Insurance? Have you ever thought of this? George Richards, formerly instructor of insurance law in Columbia University and the New York Law School, says that guarding against the loss of property or future earnings which a casualty or accident, such as shipwreck, fire and premature death or disability will entail may be accomplished by the means of a general fund obtained by the imposition of a proportionate contribution, called a premium, upon many who are exposed to the common hazard, out of which the few who actually suffer may be indemnified.

Insurance is the system for distributing losses of this character. The original meaning of the word "insurance" is *to make certain*—to make sure. It is not trespassing, therefore, upon the characteristics of the pedant to say that indemnity is the more correct term for the business in which we are engaged than insurance. As a matter of fact Webster's International Dictionary—the Century—Black's Law Dictionary and Words and Phrases (a work put out by the West Publishing Company) all use the expression "compensate or indemnify" as the basis of their definitions of the word insurance.

The oldest form of insurance is that of Marine Insurance. This seems to have originated in Rhodes and to have been adopted by the commercial cities of Italy and by the Towns of the Hanseatic League between the 12th and 14th centuries. As a matter of historical interest Hanseatic League—or the German Hanse or Hansa was a medieval confederation of cities one time

numbering about ninety, with affiliated cities in nearly all parts of Europe for the promotion of commerce by sea and land, and for its protection against pirates, robbers, and hostile governments. At the height of its prosperity it exercised sovereign powers, made treaties and often enforced its claims by arms in Scandinavia, England, Portugal and elsewhere. Its origin is commonly dated from a compact between Hamburg and Lubeck in 1241, although commercial unions of German towns had existed previously. The League held triennial general assemblies, usually at Lubeck. The last general assembly of six cities was held in 1669. Insurance was introduced into England in the 16th Century. Casualty Insurance, as we understand it, is of recent origin.

The causes which led up to the liability insurance business carry us back to economic conditions and practises of many years ago. The law of torts is the foundation upon which liability insurance rests. The basis of our tort law dates back to approximately 1,500 years B. C. In the Book of Exodus we read in the 19th verse of the 21st Chapter—"If a man shall open a pit, or if a man shall dig a pit and not cover it, and an ox or ass fall therein, the owner of the pit shall make it good and give money to the owner of them, and the dead beast shall be his." In the 19th and 20th verses of the 24th Chapter of Leviticus we read: "And if a man cast a blemish in his neighbor as he hath done so shall it be done to him—breach for breach—eye for eye—tooth for tooth." The 18th verse of the same Chapter says "and he that killeth a beast shall make it good—beast for beast." We have seen, therefore, that the theory of recompense for wrongs done, or torts committed, is of ancient origin. Insurance is of much more recent development.

There was very little tort litigation prior to 1833 when the English parliament passed an Act creating a system of factory inspection and regulating the hours of labor. This was due to the discontent of the working classes with the conditions under which they had to toil, and since that time one change after another has been made by statute to broaden or break down the defenses of the employer against actions arising out of injuries to his employes while in the course of their work, and in other ways to ameliorate the conditions of the working class.

It was well settled at common law that no action for damages would lie where an injured person died immediately as a consequence of injuries received by the wrongful or negligent act of another. It is, however, worthy of comment that prior to and at the time of the discovery of America the North American

Indians had a common practise of recompense for wrongful killing of either inflicting a penalty or punishment upon the wrong-doer through a blood feud, or of compounding the wrong by a present of wampum, arms, trinkets, or other forms of satisfaction with the relatives of the deceased.

The fact that no civil action survived for damages for death caused by wrongful act was due to the theory that the negligent killing was a crime; it was a personal wrong and, therefore, gave no right to a civil remedy. Formerly a suit brought upon this cause entailed personal disgrace to the man so sued.

Another reason assigned for the lack of a compensation for wrongful killing was that the common law was reluctant to estimate the pecuniary value of human life, but this objection could have little of the ordinary hard reason of the law in its support and it was making a sentimental scruple of more might than justice.

To remedy this condition the Fatal Accidents Act, known as Lord Campbell's Act, was passed in 1846 in England. Though this Statute did not affect the usual defenses of the employer in case of accidental injury, it did give a new right to the heirs or personal representatives of the deceased employe, conferring upon them the same right of action that he would have had had he survived. The idea was quickly accepted in this country and practically every State shortly afterwards passed a similar law.

In 1837 Lord Abinger in deciding the case of Priestly vs. Fowler announced the common law as bearing upon an implied contract of service between employer and employe, and set up the defense of the negligence of a fellow workman as a bar to recovery on account of injuries received by an employe.

It is believed, of course, that the doctrine of common employment, or as it is generally known—the defense of fellow servant—has always been an integral part of the common law. It had not, however, been announced until the case of Priestly vs. Fowler was decided.

In 1841 the Supreme Court of South Carolina adopted the same doctrine as the English Court of Exchequer, and held that a fireman could not recover against a railway company for injuries caused by the negligence of an engineer.

It is not apparent from the report that the decision in the case of Priestly vs. Fowler had come to the attention of the South Carolina Court, and, therefore, the two decisions may be regarded as reflecting the independent opinions of the Judges in England and the United States.

In 1842, however, Chief Justice Shaw delivered a famous judgment in the case of Farwell vs. Boston and W. R. Corporation, following to a certain extent the opinions expressed by Lord Abinger, and establishing with certainty the same doctrines in the United States. These two cases have probably given rise to as much discussion as any other in English and American jurisprudence.

In the early days when comparatively few men were employed by the master each workman knew the other. Constant association with him enabled him to learn the others habits, his peculiar characteristics and to become acquainted with his family. Under these conditions it was not unreasonable to require the workman to assume the risk of the negligence of the men with whom he was thrown into such close contact.

The enlargement of business, however, and changed business conditions made the application of this doctrine an absurdity. The extensive railroad institutions with hundreds and thousands of men engaged in their work at points widely separated did, under the application of the fellow servant rule, result in a freight handler in New York being held to assume the risks of the negligence of a carloader in Buffalo whom he did not know, and had never seen.

No keen powers of deduction are required to make it possible for the man of average intelligence to understand that the rule was too great a hardship for the workman to suffer under modern developments.

Another common defense entering into a substantial proportion of master and servant cases was the defense of assumption of risk. As stated in the opinion of the case of Harrison vs. Central R. R. Company. "The servant when he undertakes to perform any particular service, assumes as a part of his conventional obligations the ordinary perils which, in the nature of things, are incident to such service." This same doctrine, of course, was laid down in the case of Priestly against Fowler, to which I have before referred.

The third most prominent defense is that of contributory negligence. This defense also was laid down by Lord Abinger in the case of Priestly against Fowler when he stated "the mere relation of the master and the servant never can imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to do himself."

This would imply that the servant would not be entitled to a recovery on the ground of contributory negligence due to his

selection of improper appliances when proper ones were furnished —due to his failure to assure his own safety by the adoption of usual precautions—or due to his disregard of instructions, warnings, rules, etc.

Please observe that this very brief review of the common law touches upon only the three main defenses to which the master was entitled, and does not go into third party cases mainly because the idea of liability insurance originally contemplated only employers liability. The other branches of the business are of later development. Such questions as inspection, repair, agency, instructions, delegable and non-delegable duties, etc., are more or less correlative with the three main defenses which have been discussed.

Before leaving this subject it would not be out of place to make a brief statement of two doctrines, one of which has been considered of enough importance to have been later incorporated into statute law.

In Illinois for a number of years the doctrine of comparative negligence prevailed, according to which the Courts attempted to apportion the fault, and if a preponderance of evidence seemed to be chargeable to the employer to award damages in a corresponding amount. The rule seems to have been first applied in an employers liability case in Chicago—N. W. Railway Company vs. Sweeney. While this rule is not now recognized in Illinois it was continually followed until 1886.

In theory a system of awarding damages in proportion to the comparative negligence of the two parties involved is not unfair, provided the technicalities now met with in the treatment and handling of negligence cases are removed. We are face to face at all times with technical rules of pleading and evidence. An error of only trivial importance on the part of the plaintiff or the defendant's attorneys has in altogether too many cases resulted in a miscarriage of justice. As I have said before the doctrine of comparative negligence is recognized at the present day in several States, and will be found even in the compensation act of the State of California.

The other doctrine is one which has not frequently been invoked in master and servant cases, it being rather more applicable to claims arising out of injuries sustained by passengers while being transported by common carriers. The doctrine bears the technical term of RES IPSA LOQUITUR which literally translated means—the facts speak for themselves. The effect of the

application of this rule was to shift the burden of proof from the plaintiff to the defendant.

As stated by La Batt in his treatise on master and servant—"The rationale of this doctrine is that in some cases the very nature of the action may of itself, and through the presumption it carries, supply the requisite proof. Its essential import is that on the facts proved the plaintiff has made out a prima facie case without direct proof of negligence."

Let me give you an illustration which will make this subject a little more clear. If a person is riding as a passenger in a street railway car, and that car comes into collision with an ash cart owned by the City, and as a result of that collision the passenger is injured, then it is necessary for him only to establish that he was a passenger in the car; that the car came into collision with the cart and that he was injured. The burden of proving their freedom from negligence rests upon the defendants. A person interested in claims will naturally make sure before any claim is settled that the injured person has submitted, or can submit evidence which tends to establish his freedom from fault and the liability of the defendant, or Insured, by some negligent act of omission or commission.

While, as I have stated above, the rule is more generally applied in actions against common carriers, it is laid down in the case of Houston vs. Brush that the presumption that it raises is really based on the act or occurrence and not alone on the contractual relations between the parties. The rule has been held to apply where a brakeman has been knocked off a moving car by the fall of a rail from another car in front of him on account of defects in the car; where a piece of coal flies from the tender of a passing train and injures a section-hand who is standing at a reasonable distance from the track; where a wire carrying an electric current breaks; where a quarry car having no brake is suffered to escape and run wild; where a scaffold collapses, especially at a time when there is no weight on it beyond what it is intended to bear; where a ladder breaks under ordinary use.

The purpose in calling to your attention these two particular doctrines is to show the efforts that had been made prior to the enactment of liability laws to render more easy to the workmen a recovery for accidental injuries received. The two rules discussed were some of the mediums used to accomplish this end.

A perusal of the decisions in various cases decided in this country will indicate that the tendency of our courts was to place upon the master a higher degree of care, and generally to broaden

his liability, whereas in England the tendency was to limit the liability of the master and to place upon the shoulders of the workmen the burdens incident to industrial accidents.

Constant agitation on the part of the labor element in this country and the first evidences of a different attitude on the part of the legislators and the public in general, resulted in some early statutes being passed, which, while more in the nature of penal than civil statutes, nevertheless formed the ground work for many of the liability statutes which followed them.

This system of tort law, while unsatisfactory in many respects, proved adequate to meet the condition which existed, particularly considering the fact that the relations existing between the master and servant were more intimate then than now; that there were fewer inherent dangerous conditions in manufacturing and transportation than unhappily exist at the present time. A substantial amount of the work in manufacturing, agriculture and commerce was done by hand, or with the aid of simple and comparatively harmless appliances. England was to some degree still an agricultural country and the United States largely so.

Our big steel mills, huge manufacturing plants, our extensive railroad system and our prominent engineering corporations are creatures of the present. The remarkable progress in the 19th century in the development of labor saving machinery, transportation facilities and engineering are such that if our forefathers of one hundred or more years ago were to return to a present day sight, they would doubtless feel as if they were in a world different from that in which they had lived. They would see trains capable of making a speed of sixty miles an hour or more, to say nothing of the speed of automobiles and motorcycles; they would talk to their friends at distances of hundreds of miles over the telephone and telegraph; they would see clothing made in a day where formerly the manual labor required probably one week for the same article to be produced. We could show them huge printing presses turning out thousands of newspapers an hour, where formerly the slow process of the hand press would require more than a month to produce that hour's work.

All of these conditions had their effect upon the relation between master and servant. With the advent of labor saving machinery came the increased hazard to the worker. As the machinery became more complicated, so also, and in equal proportion, did the danger to the life and limb of the workmen go hand in hand with it. The kindly feeling of the employe toward

the master became tinged with bitterness as the labor saving machinery made it necessary for him to seek other fields of activity, and as the avarice of the employer increased with his profits realized from the cheapening of the manufacturing processes.

As all lines of business expanded many independent manufacturers combined to form our present day corporations. The kindly word to which the workman was accustomed from his employer he no longer received. The employer gradually lost interest in the family and personal affairs of the worker, and the direct contact with the laborer was had only by the foreman or higher priced manual worker. The employer himself became engrossed in arranging details for the floating of bonds and perfection of trade agreements.

Gradually the labor man himself, following the lead of his employer, gathered his fellows to himself and formed labor unions. The activities of these labor unions were dominated to a large extent by demagogues and men of their stripe. The change in the character of the newspapers, in their methods and operations but added to the discontent felt by the workmen, who no longer hesitated to bring a claim against the employer, or to use other means to get what he had been taught to believe was his due.

Many able and some unscrupulous lawyers following the trend of the times saw the opportunity for profit to themselves in fostering litigation based on torts. The number of suits brought against the employer rapidly increased so that the well equipped lawyer was prepared to respond immediately to any call he received, whether from information given him by labor organizations, newspapers, police departments or physicians, and devoted his time and attention to administering to the needs of the suffering toiler.

Originally these lawyers were called "ambulance chasers" but the term is no longer applicable because the cheapening of the cost of automobiles, and the speed permitted by them makes it unnecessary for the shyster to chase the ambulance any longer. He usually arrives at the hospital before the ambulance gets there.

Formerly the newspapers of the country derived the greater part of their profits from the price of the newspapers. Some small sums were received for printing such matters of information as the arrival and departure of trains and boats—advertisements for lost heirs—court notices on dissolution proceedings—foreclosures and other similar matters.

The daily newspaper was not of the type which we now see printed in all the cities and sold on the corner. The great impetus to the publication of newspapers seems to have had its inception in the beginning of advertising campaigns by merchants. Undoubtedly Mr. Stewart, one of our most successful general merchants, was the originator of our present day extensive business advertising. He placed considerable advertising matter in the columns of several of the newspapers, and by that means attracted many people to his store. In advertising his bargains he also increased the size of the newspapers.

There was, however, concurrent with the increase in the size of the newspapers an effort made to increase the sales by the introduction of scare headlines in large type and by catering to the sensation loving public. Publishers sought to obtain more reading matter and the reporting of accidents to employes and the public was resorted to so that for some years past it has not been possible to pick up a newspaper without seeing the details of some manufacturing, street or building accident. Such details were, in keeping with the times, closely watched and followed up by the champerters.

A small portion of the legal profession kept abreast of progress by furnishing to the people injured the means of securing compensation for the injuries they had received without the necessity of investing any money in retainer fees. The returns secured by lawyers from these cases in the early days were, in the main, more substantial than they had been able to realize from other lines of business, and, due to the fact that the majority of the cases were settled, rather than decided by litigation, the returns were reasonably quick, excepting in unusual cases.

Gradually the lawyers branched out by associating with themselves doctors of meagre ability and more limited practise, but who devoted themselves so far as they could to the interest of the business they could secure from lawyers rather than to legitimate medical and surgical practises.

Immigration was coming to this country in a constantly increasing tide. A large number of people were coming over from Russia, Italy, Germany, Austria and other countries. In 1884 the first compensation act was made effective in Germany to be followed three years later by a similar act in Austria. These workmen had been used to being paid a percentage of the time they had lost from their work on account of accidents, and they

could not understand why they were not entitled to the same treatment here. This was especially true of men who had been working in such industries as mining, navigation, railroad transportation and other of the more dangerous occupations.

The principle of compensation had been known in these industries in Europe for over a century. It was but natural, therefore, that these people should expect money when they were injured in this country, and I believe that this is one of the causes of the development of such a large number of claims in this country, which has been more or less overlooked by those who have studied the subject. In any event the claim adjuster who does not believe that the majority of claimants are dishonest will accept this view with comfort.

In 1872 a law relating to the regulation of mines and providing penalties for violation thereof, or for wilful failure to comply therewith, and rendering persons so offending liable for all damages resulting from such violation or failure, was passed in California. Similar laws affecting the operation of railroads and mines were placed upon the statute books in other States, and a small step forward to our present condition was taken.

The conditions of economic unrest culminated in 1880 in the passage of the Employers Liability Act in England; this act became effective in 1881. Five years later the State of Alabama followed the lead of the English Parliament and placed a liability statute upon the books, and Massachusetts was next in 1887. Do not confuse these liability statutes with the laws giving a right of action for death because the purposes of the two kinds of exactments were different, as I hope has been made clear to you. One State after another followed suit until there were comparatively few States which did not have a law in operation, and so the stage was set for the beginning of liability insurance in the United States.

The numerous claims which were being made and enforced in the cities enabled the Employers Liability Assurance Corporation in the year 1886 to offer to employers the means of protecting themselves against fraudulent and dishonest claims, and the means of reducing to a certainty, instead of suffering from a steadily growing uncertainty, the cost of taking care of those who unfortunately sustained bodily injury by accident in their plant.

The first liability policy was written in this country in 1886 in the State of Wisconsin by the Company I have alluded to, and the idea of the business was quickly taken up and gradually expanded by other companies.

The early form of liability insurance contract had very few points in common with our present day policy, and I purpose briefly to outline some of the old conditions and clauses and compare them with our present day contracts.

One of the first employers liability policies reads after this fashion:

"Whereas.....hereinafter called the employer, by an application dated.....189 , the statements in which the employer warrants to be true and agrees shall be incorporated herein, has applied to the.....company, hereinafter called the corporation, for an indemnity against claims for compensation for accidental personal injuries caused to employes while engaged in the employer's work at the place or places mentioned in the Schedule hereto, and has paid to the Corporation the sum of.....Dollars as the..... premium for such indemnity, for.....calendar months from the.....day of.....at noon, which premium is based upon the estimated yearly payroll of the employer, amounting to $.....

NOW, it is hereby agreed as follows:—

That the Corporation, in so far as regards accidental personal injuries caused during the above period, will pay to the employer, or his legal representatives all such sums for which the employer shall become liable to his employes by virtue of the Common Law, or of any Statute, subject to the following limitations:"

"VEHICLE CONTRACT. To be attached to and form part of Policy No.....issued by the (COMPANY).

In consideration of the application for this Contract and of .....Dollars the COMPANY hereby extends the above mentioned policy, subject to all the Agreements and Conditions thereof, saving as herein specifically provided, to all sums during .....months from noon of.....189 , for which the Insured shall become legally liable for accidental personal injuries, fatal or otherwise, sustained by any person or persons whomsoever other than employes of the Insured, caused by or resulting from horses or vehicles used by the Insured if engaged in his business, and if in charge of the Insured or of his own employes.

Provided, however, that the limit of liability, under this clause, in respect of any one person, shall be FIVE THOUSAND DOLLARS, ($5,000.00) and that the total amount of liability

shall not exceed TEN THOUSAND DOLLARS ($10,000.00) during the period covered under this contract.

IN WITNESS WHEREOF, the Corporation has caused these presents to be signed by its authorized Manager, acting under power of attorney this.....day of.....189

This contract will not be valid until countersigned by the duly authorized Agent of the Corporation at ..... Signed:
.....
Agent. By:

OUTSIDE LIABILITY POLICY.

WHEREAS.....hereafter called the Insured, by an application dated.....the statements in which the Insured warrants to be true and agrees shall be incorporated herein, having applied to the (Company) hereinafter called the Corporation, for the following indemnity, viz: (injuries caused by or resulting from horses or vehicles of any kind excepted) and the sum of.....Dollars, having been paid to the Corporation, as the.....premium for this indemnity, for.....calendar months from the .....day of....., at noon.

IT IS HEREBY AGREED AS FOLLOWS:

That the Corporation will pay to the Insured or his legal representatives within one week after the receipt by the Corporation of satisfactory proofs of claim, *all sums for which the Insured shall become liable for personal injuries, caused as aforesaid,* during the period covered by the premium now paid, or by any renewal premium, by virtue of the Common Law or any Statute, subject to the following limitations:—

In no event shall the liability for any one person exceed .....Dollars ($), and

In no event shall the liability for any one accident exceed .....Dollars ($).

The corporation shall not be liable for claims under this Policy beyond the amount of.....Thousand Dollars in respect of any one period of Insurance.

This policy is subject to the conditions and agreements printed herein or endorsed hereon, which are made a part of this contract.

IN WITNESS WHEREOF the Corporation has caused these presents to be signed by its authorized Manager, acting under power of attorney, this.....day of.....

This policy will not be valid unless countersigned by the duly authorized agent of the Corporation at ..... Signed:
Agent. By.

Among the General Agreements are some interesting clauses:

"The Assured when requested by the Corporation shall aid in securing information and evidence and in effecting settlements, and in case the Corporation calls for the attendance of any employe or employes as witnesses at inquests and in suits, the Assured will secure his or their attendance, making no charge for his or their loss of time." "This policy does not cover any injuries caused by the failure of the Assured to comply with the requirements of any law or ordinance respecting the safety of persons."

"This policy does not cover injuries to any child employed contrary to law, nor to any child under fourteen years of age where no statute restricts the age of employment, nor does this policy cover any injury due wholly or in part to the employment of any such child."

Special Agreements:

"This policy does not cover loss from liability for injuries, as aforesaid caused by or happening in or about any elevator plant, or by the explosion, collapse or rupture of steam boilers, unless such elevator plant and boilers are enumerated in the schedule hereinafter given, nor for injuries to or caused by any person unless his wages are included in the estimated wages hereinafter set forth, and he is engaged, at the time of the accident, in an occupation hereinafter described."

"This policy may be cancelled by the Corporation at five days' notice in writing. It will be cancelled on the same notice at the request of the Assured, provided he is retiring from business or suspending operations, and the unearned premium will be calculated and payable as above."

It will be observed from this that the interpretation of this contract was not especially difficult because very few cases arose where it could not be claimed that the Insured had failed to comply with the requirements of some law or ordinance respecting the safety of persons. The Claims Examiner could start

out with the assumption that the negligence, if any, was the result of such a failure upon the part of the Insured, and then proceed to explain to the policy-holder some imaginary conditions which would make the contract of some value to him.

All companies, of course, did not follow this procedure. The majority of insurance corporations did not want to appear technical in the interpretation of their contracts, but these obviously commodious loopholes for crawling out of claims undoubtedly did much to retard the early growth of the liability insurance business.

In the Schedule of Warranties there was no statement by the Insured that similar insurance had been cancelled or the renewal thereof refused by any company prior to the issuance of the risk.

In the early part of 1897 a new form of policy was put out which excluded under the heading of Special Agreements liability for losses arising out of injuries sustained before the buildings, plants, etc., were fully completed and accepted by the insured, or due to alterations, additions or extraordinary repairs. Ordinary repairs were in a later policy defined as changes in and additions to shelving, counters, or partitions and general internal repairs when the completion of the work incident thereto did not in any case exceed the term of five days.

It is interesting to note in addition that the original policy limits were usually for $1,500.00 and $5,000.00. This was increased to the now customarily accepted standard of $5,000.00 and $10,000.00, but the policy read in respect of the limits—"The corporation shall not be liable for claims under this policy beyond the amount of $10,000.00 in respect of any one period of insurance."

It is well to mark and keep in mind the provisions with reference to cancellation by the Insured. He had that privilege only when retiring from business or suspending operations, and when he chose to exercise it he was permitted to do so on a pro rata basis less 25% for expenses. Some other policies provided for cancellation under the terms of the short rate table with an additional deduction of 30% for expenses. The business of cancellation by the Insured was in those days a profitable one for the Company.

Some short time afterward one of the companies excluded from the coverage of an employers liability policy injuries resulting from the installation of mechanical equipment. During the year 1905, however, or thereabouts, the Standard Accident

Insurance Company removed from its policy the clause relieving them of the liability in the event of the Insured's failure to comply with any safety statute. In a measure this was the beginning of an effort upon the part of the companies to broaden the coverage under their policies as a means of inducing business.

The original automobile policies were endorsements placed upon teams policies, and were issued beginning with the year 1900. The rate basis was different from that employed at the present time, because the first use to which automobiles were placed was that of livery and as the cars were electrically driven they did not make high speed. Special agreement B. in a policy issued by one of the Companies which first issued this form of insurance, reads: "The premium for this policy is based upon the number of drivers employed during the policy year. At the end of the policy year the Assured shall report to the Corporation the total amount paid to drivers during the year and the average individual wages paid. If the number actually employed on the basis of this data is more than the number stated in the schedule, the Assured will pay an additional premium in proportion; if the number be less the Corporation will on demand return to the Assured a proportionate premium, less twenty-five per cent. thereof for expenses."

There was no exclusion against the carrying of passengers, no property damage endorsements were issued and collision insurance, as it is now understood, was not known. Some of the points of difference between the present day contracts and the old contracts are that today the insured is covered for a stated period. There is no limit to the amount of the policy excepting as respects individual accidents. There is no deduction for the expenses made from the unearned premium in the event of cancellation. Such exclusions as failure to observe safety statutes, accidents due to steam boiler explosions, etc. do not appear in present day contracts.

Formerly the teams and liability policy was designed not to cover accidents due to the loading and unloading hazard. If such coverage was requested an extra premium of 10% was charged and an endorsement was placed upon the Policy to effect the extension applied for.

Family driving was originally permitted only by the attachment of an endorsement and the payment of an additional premium to the teams policy. This was due to the fact that most of the policies sold covered business vehicles and not pleasure driving.

Let us now consider the methods of the Claims Department in handling claim conditions as they then existed. There were relatively few companies as compared with the number doing business today. The amount of business written was small, the total volume being less than $10,000,000.00 for the United States written by all companies in 1900 as against nearly ten times that volume in 1915. As the business was scattered the Adjuster ordinarly covered a wide territory; the business was largely confined to the larger centers and a few adjusting offices were sufficient for the needs. As a rule the Adjuster was not a highly paid man, and in his work he had the opportunity of getting some insight into many lines of business. The necessity of meeting a large number of people, many of them men of substantial business means and acquaintances, provided the Adjuster with opportunities for drifting into other lines of business.

The work was arduous because it was necessary in the investigation of accidents to interview claimants and witnesses at their pleasure and not at the convenience of the Adjuster; this meant long and uncertain hours. From time to time the various companies invited the agents to convene for the purpose of discussing means of furthering the business of the companies and at these meetings provided them with entertainment and in many ways did what they could to keep the interest of the producers. In such matters the claim adjuster was not considered. It was very noticeable, therefore, that the claim man was not entirely contented with his lot; he was not disloyal to the Company but he felt that once he was placed in a territory he was forgotten unless something went wrong with an individual case, or unless the net returns from the territory in which he was operating showed a loss. To a certain extent, therefore, the field adjusting conditions were not stable.

Toward the claimants whom the Adjuster was required to handle he did not as a rule evince any tendency toward sympathy. Do not understand from this that it is my opinion that the Adjuster should be swayed by any such sentiments in the disposition of claims. There are, however, times when the Adjuster well knows that a case without merit from the liability standpoint, but where the injuries are severe, will doubtless drift into the hands of an attorney if a settlement is not effected.

When the cost of the trial of a case is considered it is better in some instances to give that amount to the claimant than to trust to the uncertainties attendant upon a set of facts being submitted to a jury. Small sums are not unwisely spent in disposing of some of the cases of this nature, and particularly where the need of the injured person is so urgent that a few dollars wisely spent at the time of the need would prove a blessing. It is possible for the Adjuster to be so technically right as to be dictatorial. Fortunate it is for the companies that their claims departments do not practise the old theory to-day.

From this it must not be understood that the Adjuster formerly handled his cases like a bull loose in a china shop for such was not the situation. Considerable ingenuity was used by the Adjuster in achieving his ends, but generally his methods were bordering on the crude. As a rule he was irritated with any interference or suggestions upon the part of an Agent. He did not court the assistance of the Agent, nor did he take the trouble or pains to let the Agent know what he was doing. It sufficed for him to handle the claim in his own way—to obtain the information as he saw fit, and to leave, feeling that he was through with another bad job which was loaded upon him by the fiendish ingenuity of the Agent in digging up another bad risk.

In examining a policy to determine whether or not the case was covered he often turned first to the exclusions rather than to the insuring clause. To-day the method of examination is reversed, and the claims man ordinarily gives the Insured the benefit of any reasonable doubt.

For a time, of course, the companies prospered, partly by reason of the high rates which could be secured in the early days of the business due to lack of competition and a misunderstanding of what was a proper basis for a rate, and partly by reason of the methods employed by the Claims Department.

It must not be understood from what I have said that the Companies, nor indeed the majority of the adjusters overlooked their moral obligations to themselves and to others. The fact was, however, that they were engaged in a new kind of business; they were meeting a new condition. There was no precedent for their work and they were blazing their own trail as they went along. They were too busily engaged in the difficulties of the present to consider the future. The result, however, soon began to show. First the attorney, in endeavoring to devise ways and means of meeting the more highly specialized knowledge and methods of the adjuster, undertook to devise a system whereby he would be enabled to offer his assistance to claimants before the adjuster was aware that an accident had occurred.

One of the means of accomplishing this was by private arrangement with willing police officials who saw no harm or

injustice in their accepting part of the proceeds received by an attorney for handling a case which had been sent to his office through their efforts. A large number of attorneys engaged in this particular practise did not bother themselves to attempt adjustments; they served a summons and complaint as their first move and then took up the question of adjustment. In many States this gave them a lien upon any amount which was paid out direct to their client in settlement. They associated with themselves, as I have said before, doctors whose main business it was to see that no injuries which might have been sustained were overlooked, and that no symptoms which could be construed as a possible basis of future suffering should be neglected.

The ability of the doctor to convince a person who had stubbed his toe against a cellar door not flush with the sidewalk, that his hearing had been affected, and that his nerves had received a severe shock, is well known to all of us. As the claimant became more impressed with the injuries, real or fanciful, from which he was suffering, and as the attorneys impressed upon him the large number of substantial verdicts which had been rendered for injuries less severe than he had received, his hopes, as well as his avarice, grew.

As the knowledge of these conditions and practises spread among people, as the discussion of large numbers of accidents reported in the papers was had, as the dangers to pedestrians in the streets and passengers in conveyances increased, so did the value of the injuries increase in the eyes of the juries who after all, are the public.

In sympathy with the increased cost of settlements the loss ratio went up, and the profits in the liability insurance business went down in spite of the frequent increase in rate. One State after another passed laws affecting adversely the business. Some of these laws, like those passed in Massachusetts and Ohio, practically established a privity of contract as between the injured person and the insurer, and made of no avail the efforts of a company to avoid payment on the ground of insolvency of the Insured.

In the history of this business we have now reached a point where a radical change was to occur. The liability statutes had served but to increase the income of negligence lawyers, and to distribute unequally to a relatively small proportion of the number of men injured the amounts which were being paid out by the employer as a result of casualties suffered by the workmen. The idea of compensation to the injured person, irrespective of

fault, was beginning to take root, and in 1910 the first compensation act was passed in the United States.

A legend says "There is nothing new in the world," and following this thought we, therefore, do not credit modern minds with the idea of compensation.

If you will turn to the 21st Chapter of the Book of Exodus, and read the 19th verse you will obtain the provisions of the first compensation act which was ever passed. The old Mosaic Law provided "If he rise again and walk abroad upon his staff then shall he that smote him be quit, only he shall pay for the loss of his time, and shall cause him to be thoroughly healed." This law was not administered by a commission.

We have seen that the idea of compensation had been in effect in a few dangerous employments in Europe over one hundred years ago. The first general application of the idea of compensation was in Germany which passed an act in 1884; this was quickly followed by the Austrian Act in 1887, to be followed in 1894 by the Norwegian Act—the Finnish Act in 1895 and the English Act of 1897. To indicate the scope of the movement for compensation it need only be said that up to 1913 no fewer than forty-one foreign countries and provinces had passed workmen's compensation laws. Here then was a new idea and it found the claims adjuster in an entirely different frame of mind and much better equipped from years of practise to accept it in proper spirit, and to make it effective both in letter and intent.

To the credit of the Liability Insurance companies be it said that but very little antagonism has been created through the handling of compensation acts by claims departments generally.

We shall now revert temporarily to the work of the Claims Man in the Head Office. His duties are in many respects similar to and in some respects very different from those of the field adjuster. Upon him rests the responsibility for watching over the entire field of operations of the Company. It is not often that he comes into direct personal contact with the claimant.

Frequent changes in the laws and decisions must be known to him because legal as well as local conditions, in addition to the facts, have a prominent bearing upon the value of the cases. The Head Office man must know for instance that in Massachusetts contributory negligence is an affirmative defense to be pleaded and proven by the defendant. He must know the age limit set by ordinance or statute under which any person is permitted to drive an automobile. He must know that in Texas this matter

is regulated by ordinances because the automobiles are licensed in the City in which the driver or owner resides, and not by the State. I could go on and give you instance after instance of conflict in the laws of various localities. I could show you where the fact that the courts in some States follow generally the decisions in certain other States, the value of the case is regulated by the local conditions in the south for instance, and the legal decisions in the north, where no case in point can be found in the reports of the State in which the accident occurred.

For the benefit of those who have not had the necessity nor the occasion to read or familiarize themselves with legal history and as indicating somewhat the necessary foundation which a successful claim man must lay for himself a momentary excursion away from the topic we are considering would not be unprofitable.

Louisiana is the one State in this country which follows the civil law rather than the common law. The common law is defined as that body of law in jurisdic theory which was originated, developed and is administered in England, as well as in most of the States and peoples of Anglo-Saxon stock. It derives its authority solely from usages and customs of great antiquity—from judgments and decrees of the courts affirming and enforcing such usage and custom.

Civil law on the other hand, or as it is known, the Roman Civil Law, is the system of jurisprudence held and administered in the Roman Empire, as set forth in the codification of Justinian and Napoleon. From it we get many of our present legal principles. The Roman Civil Law probably goes back to 450 B. C. when a commission was sent to Greece from Rome where it collected data necessary to draw up a written code of laws. This code was later called the twelve tables. Subsequently the legal writings and opinions of the more eminent jurists and lawyers were held binding upon the judges, and in the year 530 A. D. Emperor Justinian appointed a commission to codify these writings and opinions.

The result of their digest of over 2,000 books was put into the form of the Justinian Code consisting of about 50 books. This law was made effective in France and in the early part of the 19th Century Napoleon had produced a code which has since been known as Napoleon's Code. It is accepted as law in practically all Latin speaking countries.

Inasmuch as the Civil Law has been drawn upon by our English jurists when occasion arose for changing common law

principles to apply to new circumstances and conditions of fact the distinction between these two systems of law is of interest historically rather than practically.

The Head Office Claims man must guide the company in estimates of his outstanding liabilities on open claims. Inaccurate estimates, or reserves not based on a full consideration of all facts and conditions are likely to show an underwriting loss where there is a profit and vice versa. They may cause embarrassment to the company figuring on a certain amount of outstanding liabilities which, two or three years later, turn out to be twice the estimate placed upon them.

It cannot be expected that the Executives of a company have time to examine the individual cases because in a company whose operations are large the total number of cases is correspondingly large, and it would be out of the question for one of the company's officers, not a claim man, to devote sufficient time to them to get an understanding of the correctness of the figures submitted by the examiner.

The Examiner further must see that the men in the field not only furnish sufficient facts of every kind to enable the Head Office to judge the value of a case, but he must further in his correspondence express to the field men the principles and practices formulated and followed by the company.

If the company is broad-minded and liberal in its dealings with others that attitude will show in the correspondence and the adjusters will assume a similar attitude with those with whom they come into contact. The principles of the company are, of course, first promulgated by the directing officer or executive; he in turn makes known the attitude of the company on various questions to the Chief of the Claims Department, and he in turn passes them along to the field men.

Again the examiner is called upon to interpret and criticise the policy contract. It is in respect of questions arising out of the interpretation of the policy contract that the attitude of the company is most clearly indicated. An attitude of broad-mindedness is quickly acquired and followed by the field men if they are given to understand that in that they are supported by their superior officers. On the other hand taking advantage of technicalities and other forms of chicanery are as readily absorbed and as zealously carried out by the field men.

When the examiner is satisfied that the phraseology of the policy is ambiguous, or does not express the intent of the company then his duty points to the advisability of taking such matters

up with the executives, and to further put right the error or discrepancy.

He is expected to observe in his scrutiny of policies and suggest the remedy for such an underwriting oversight as this:— In consideration of the meritorious condition of the insured's premises as disclosed by inspection thereof based upon the universal Analytic Schedule, it is expressly understood and agreed that the premium rate per $100.00 of earnings of employes engaged in connection with the work described under statement No. 4 of the undermentioned policy, and conducted at the premises therein specified, is hereby amended to $.985 in lieu of $.92, as written.

Many agents and once in a while insureds call at the head office to take up matters and they occasionally have some criticisms or suggestions to offer. The patience and ingenuity of the examiner is often tried on these occasions first, to satisfy the agent, if possible, and second to do it in such a way as not to interfere with the adjuster in the field, nor to weaken his control over the affairs generally in his territory, nor to impair his influence.

It being agreed that we are all liable to commit errors it is found that at times the Adjuster is in the wrong—more often not. If the condition or fact submitted by the Agent indicates that the Adjuster has been to the best of his ability following instructions and the rules of the company, then the examiner must satisfy the Agent and maintain the stand taken by the Adjuster. In some instances this is not an easy task. Many agents have said they go into the Head Office feeling that they are going to come out with a few kind words, a little flattery, possibly some congenial spirits and empty hands. Some of them feel that the people with whom they come into contact in the Head Office are artists at talking without saying anything. There is not a great deal of truth in this. It is my belief that the average Head Office Claims man makes an honest effort to satisfy an Agent as well as the insured and the company, and on such occasions as he is not able to satisfy the Agent it is not because he has talked pleasantly into his ear, but because the Agent has submitted a suggestion which cannot be complied with.

While on the subject of the work of the Head Office Claims examiner it will be interesting to determine what methods are pursued in judging the value of a case. We shall assume, therefore, that a notice of accident has been received. The procedure is, after a folder and card entry have been made, to call for the

application upon which the insurance is based, and determine first if the case is covered. Being satisfied upon that point the location of the accident is carefully examined. Assuming that the claim arises out of injuries caused by an automobile the general conditions in the locality are studied. This means that the examiner generally knows that in the Cities of New York, Boston and Philadelphia the streets are narrow and congested, although in the main flat. He knows that in such cities as Chicago, San Francisco, Los Angeles and others, the streets are in the main broad, the general pavement good and excepting, of course, such a city as San Francisco the grades are not numerous nor heavy.

The facts of the accident are then carefully examined to determine the speed of the automobile, the experience of the driver, the general condition of the pavement, traffic, the time of day, the weather, the grade of the streets and the distance from corner to corner, and curb to curb at the scene of the accident. He then determines the nature and extent of the injuries. In connection with this, of course, he must understand the age of the injured, his domestic condition, his earning capacity, and his mode of living.

A boy of twelve years suffering a compound comminuted fracture of the leg between the knee and the ankle has a far better chance of complete recovery without shortening of the leg, or other disability than a man fifty-five years of age 5 feet 5 inches in height and 250 pounds in weight. Doubtless this mere statement will appeal to your reason without further explanation. It will be agreed that the man who lives in comfortable surroundings, who can enjoy clean and wholesome food, whose domestic condition is happy, and whose home is kept neat and clean is more likely to experience an early recovery from an injury than one on a small earning capacity with a large family to support and improper food and sanitary conditions. The man who can sit in his office and earn his living by means of his mentality rather than his brawn and muscle is going to be in condition to work much sooner than the man who carries a hod because one man must be upon his feet all day while the other follows a sedentary occupation.

An effort is then made to apply to the facts the statutes and local ordinances. In many cities the ordinances permit a general speed of fifteen to twenty miles per hour, except at crossings where the speed must not exceed eight to ten miles per hour. If the automobile is turning the corner the speed is usually limited

from four to six miles per hour. A chauffeur is not permitted to pass a standing trolley car, and in some cities he is not permitted to pass to the right of a car which has slowed down for the purpose of taking on or discharging passengers. The fact that one city or town has local ordinances limiting the speed to twelve or fifteen miles is no reason for basing an assumption that the adjoining town has the same ordinances. It must be understood, of course, that the mere violation of an ordinance does not create a liability or lay the blame upon the driver of the machine, because if the negligence of the operator lays in the violation of an ordinance then that violation must be the moving or proximate cause of the accident before he can be held liable.

Even this rule has exceptions because in some jurisdictions the mere violation of an ordinance or statute is evidence of negligence and in others is negligence per se.

Having applied these various lines of thought to the case and having studied the facts and laws then the examiner must give consideration to local conditions. For instance in the States of California, Washington and Oregon women may sit upon the jury because they have the franchise. In a case like this the examiner wants to make sure that the defendant who comes before them is a man of pleasing personality and engaging address. He must also remember that in some States it does not require the full vote of a jury to carry a verdict—nine jurors in some some States are sufficient, while in others, and I may say the majority, twelve.

Finally he comes to the question as to the attitude of the juries in the various sections of the country. A negro boy south of the Mason-Dixon Line, twelve years of age, in most localities of that section, will bring a verdict for death of approximately $2,000.00; the death of a white boy of the same age may result in a verdict of $3,000.00 or $4,000.00, and possibly more. In the Middle West a verdict of $2,500.00 would be considered fair, while in the State of Rhode Island the records will show that $1,300.00 is an acceptable figure.

While it cannot be accepted as a rule, under ordinary circumstances it may be assumed that country juries are not prone to assess damages in as high amounts as are given in the Cities and industrial centers. The reason for this is that country juries are composed of men who can live more cheaply than those living in large centers, so that what amounts to a meagre living in New York, for instance, would be considered as a competence in the rural districts of New England.

You will easily recognize that diversified lines of thought must be at the command of the examiner who is passing upon claims. As I have said before the present day Adjuster relies upon different methods to accomplish his end than the man who settled cases fifteen years ago. There must be in the first place certain physical characteristics possessed by the men in the field to-day because the demand of the Head Office for facts and details makes it necessary now more than ever for the Adjuster to go where the facts are to be found, no matter what condition he encounters.

Therefore, men of robust physique—with good judgment—a fairly good education—ingenuity—versatility and pleasing address are required.

It is not so long ago that an Adjuster was called upon to obtain some facts with reference to an accident which occurred in a coal mine. In going into the mine, equipped as he was with jumpers, overalls, cap, lamp, etc., he found himself in a cross entry, as the passageways in the mines are called, far from the shaft, and face to face with a brattice work which shut off his further progress. In attempting to open the door the draft blew out the light in his lamp, and he found himself in total darkness. He then attempted to work his way out by keeping his hands against the wall as a guide. Unwittingly he placed his hand upon a wire carrying 240 volts of electricity, and used to run the little mine trolleys or motors which haul the coal out of the mine and the empty cars into it. While it seemed to the Adjuster a long time, still it was only a half minute or so before the fire boss came along and seeing the man's predicament released him by cutting the wire.

A while back an Adjuster called to settle a case with an injured Italian. He found this man residing on the top floor of a four story building in the front apartment. He had his money distributed in various parts of his person in rolls of small bills, as is often found effective, and after having agreed upon an amount smaller than he had anticipated took out a roll of bills to pay the claimant, and take his release. He had with him an Italian interpreter. The sight of the money aroused the evil passions of an old woman who was in the room, and while the injured person dallied the settlement along she went out and returned with four other men. Upon the entry of the last of these men the door was locked and the money which the Adjuster carried was demanded. Before that man got out of the room there was a free for all fight resulting in two of the Italians

being floored, and the other two being cowed into submission. The Adjuster then went across the street and finding an able bodied longshoreman, whom he knew, returned in his company, paid the money over and took a release.

From this you will understand that the work of the Adjuster does not always consist in telling funny stories and coining happy phrases. The work also has its rough side. Superior mental training and education are required to meet the fallacious arguments advanced by attorneys in support of claims they make for their clients, and a workable knowledge of the law of torts is indispensable. A speaking acquaintance with medicine and surgery is desirable, some knowledge of mechanics, manufacturing and various other lines is of value.

The present day Adjuster does not pursue the somewhat rough and often crude methods of the 1895 model. An illustration of the way he works shows the radical difference in procedure. A short time ago an Adjuster was sent into Virginia to dispose of a claim arising out of fatal injuries received in a steam boiler explosion. He found the widow living with her mother-in-law. She had been married six years and had always lived with her mother-in-law. The widow had her ideas fixed at $10,000.00 and they were likely to stay at that figure because her mother-in-law told her they were too high. This the Adjuster learned by calling at the home and eating a meal. The means he finally took to change the widow's ideas were to learn when the widow was going to be away from home and then call upon the mother-in-law and satisfy her that the widow's demands were entirely reasonable. The claimant was making efforts to settle the case so that she could get sufficient money to enable her to to buy a little home and thus enable her to live apart from her mother-in-law. The following day the widow called at the office and told the Adjuster that she was sick and tired of the interference of the mother-in-law, and if the case could be settled immediately for a slight advance over the previous offer of the Adjuster she would be satisfied. The deal was closed through the kind assistance and interference on the part of the mother-in-law.

Another evidence of the present day Adjuster's methods is in a case which was settled within the last six months. The claimant, a Mexican, was demanding an exhorbitant amount of money for comparatively trival injuries. His ideas hovered around $1,000.00 and he was finally brought down to $600.00. The Adjuster then told him he would pay him 600 pesos and the Mexican accepted the offer.

There is another of the adjusters requirements, however, which is more important than any other qualification and that is—absolute moral integrity and a highly sensative conscience. The temptations in the way of the Adjuster are many and varied. He is assailed on all sides by suggestions from dishonest champerters, from claimants themselves and occasionally from policyholders. There are so many ways by which a few dollars can be put into the hands of an Adjuster who is not entitled to them, that the wonder is such a comparatively few men in the business give way. Plausible suggestions and arguments are made to them to ease the burden upon their conscience. This dangerous condition, if no other argument were available, would be sufficient to indicate the inadvisability of entrusting to young men just starting into business, and earning small salaries, the handling of money in the settlement of cases. It is true that some companies have lost money through the peculation of Adjusters, but I am firmly convinced that the number of men who have thus gone wrong, and the amount of money they have wrongfully taken is infinitesimal compared with the total amount of funds handled and the large number of men engaged in the work.

The 1916 Claim Adjuster must be a hard headed, well equipped, sensible man who does not allow his heart to run away with his head. He must look to the best interests of his company at all times and deal largely in facts rather than romances.

Some novel propositions are put before the Adjusters to decide and a logical mind coupled with a large volume of common sense must be applied to the problem. The business has, of course, its amusing features at times: A short time ago an adjuster who was handling a personal accident case was trying to discover why a man had suffered such severe injuries as to result in death by falling out of bed. His theory was that apoplexy was the cause of death but the statement of the relatives was to the effect that the deceased had a nightmare. He dreamed that he was riding horseback and on approaching a precipitous cliff the horse had lost his footing and had thrown the man over the cliff. The dream was so realistic that the deceased fell out of bed and upon striking the floor suffered a serious internal injury from which he died without regaining consciousness. The natural question would be "How did they know he was dreaming and how did they know what he was dreaming?" An autopsy subsequently proved that the man died from causes other than accidental means.

Occasionally he gets such a letter as this:—"We enclose

herewith notice of injury. Mr. Davidson rather accidentally was not killed by the explosion of a cast-iron gas heater." An illustration of one or two novel propositions encountered and some of the hard problems which the examiner is called upon to solve will prove interesting.

In Massachusetts a tenant residing in a tenement house covered by a general liability policy, contracted typhoid fever and claimed that it was brought about by the unsanitary condition of the toilet which was situated in the cellar of the premises in question.

Another case was that where a women died of pneumonia. The representative of this woman claimed that this was brought about through the lack of heat in her tenement, the heater having become out of repair. The policy covering the premises in question was the usual General Liability covering "bodily injuries accidentally suffered." This policy, of course, is much broader than it was three or four years ago when it was limited to, "bodily injuries caused by external, violent and accidental means."

Upon looking into the law on this subject, it was found that under the broader policy the courts are now construing a disease as a bodily injury and since an accident is an event which is unexpected, or the cause of which is unforeseen, these two cases were accepted as covered by the policy. The main cases on this subject are as follows: Columbia Paper Stock Company vs. Fidelity & Casualty Company of New York, 104 Mo. Ap.—it was held that kidney disease contracted by an employe by handling infected rags for her employer, is a "bodily injury accidentally suffered" within the terms of an employer's liability policy.

In the case of Hood & Sons vs. Maryland Casualty Co. 206 Mass. 223 it was held that, glanders contracted by an employe who had been working upon horses suffering with the disease was "a bodily injury accidentally suffered," within the terms of an employer's liability policy.

The same ruling was also held where an employe contracted typhoid fever in a late case, Portland Gas & Coke Co. vs. Aetna Life Insurance Co. decided by the Circuit Court of the U. S. for the District of Oregon, on June 21, 1915.

In closing I wish to point out briefly what I consider to be a defect in our present system of rate making, and that is the lack of the application to the rate basis of information which the Adjuster and Claim Examiner both must consider in fixing the value of cases. For instance it is to be seriously doubted that

the fact that women serve upon the jury in some States of our Union is given any serious consideration by actuaries, although there is no question that this fact has a bearing upon the value of claims. It is open to question that the rate making bodies consider the attitude of juries in respect to the measure of damage. You will recall that I have before stated that a case may have different values in different parts of the country. It is not probable that the decisions of the courts are given any serious reflection in changing automobile rates for instance, nor that statutes affecting the speed of automobiles, the age at which a person is permitted to drive an automobile, and many other similar questions have the bearing that they are entitled to in rate making. Do you not agree that a person who may properly drive an automobile in one State at the age of sixteen is not likely to use good judgment and have those qualifications of strength and quick wit which are the necessary requisite to a good automobile driver? Presumably there is no argument on the question that automobiles are safer in the hands of people eighteen years of age and more than in the hands of persons between the ages of fifteen and eighteen.

Furthermore how much consideration do you believe is given to the question of topography. Let us consider the two cities of Buffalo and Cincinnati. There is not a great deal of difference in the population of the two cities yet where Buffalo has broad, well paved streets with practically no grades the Cincinnati streets are not particularly well paved; they are narrow, traffic is congested and there are many steep hills in the City proper with dangerous curves. The natural tendency for a man about to drive an automobile up hill is to secure sufficient momentum on the level to carry him as far as possible without the necessity of changing his gears. An accident occurring at the foot of one of these hilly streets is usually caused by excessive speeding.

Look again at the City of Detroit. There is a city with a population somewhat larger than Buffalo, but not substantially so. The physical conditions are similar in that the streets as a rule are broad, well paved and not congested with traffic. Yet the conditions are different due to the fact that there are a great many automobile manufacturers in the City of Detroit; there are a great many more automobiles running on the streets, and so many accidents have resulted from the testing out on the public highways of motors in the process of assembling that there is a very bitter prejudice against automobile drivers, and the result of this is reflected in the attitude of claimants as well as jurors.

It cannot be doubted that the man who must go into factories, apartment houses, office buildings and other places where the risks upon which the insurance is carried are seen in operation, is in position to give valuable suggestions to the rate-maker, and furthermore, there is no serious questioning the fact that the Adjuster understands better than the underwriter the hazards upon which the rates are based.

The underwriter and rate-maker is guided largely by the result of application of the knowledge of trade and occupations of the individual insured, some knowledge of the localities in which the risks exist, and in rare instances a personal acquaintance with the Insured himself; but even from this standpoint it is possible that a better than average risk to the underwriter would be an expensive hazard from the claims standpoint. This is true not only in liability insurance but in compensation insurance.

How much thought do you suppose is given to the question of the accessibility of a risk from the nearest claims office? How often is the proximity of a competent surgeon to the employers liability risk considered? The traveling charges of a physician located some distance from a plant are worthy of consideration, and on one individual risk they may make all the difference between a profit and a loss.

The claim man knows whether the court procedure in a certain locality is so cumbersome as to make it expensive to handle either litigation or settlements arising out of injuries to minors.

To those of you, therefore, who may have any interest in this subject I offer this suggestion that all rate-making bodies should include during their deliberations one or more representatives from the Claims Department.

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TITLE